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INFO IRAQ COLLECTIVE PRIORITY  
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UNCLAS SECTION 01 OF 02 STATE 088209

SIPDIS

E.O. 12958: N/A

TAGS: PREL UNSC IZ EFIN  
SUBJECT: INSTRUCTIONS TO LOBBY COSTA RICA ON OIL-FOR-FOOD

REF: A. USUN 366

¶B. KUJWINSKI-PHEE EMAIL 4/23/08

¶1. (U) Summary and Action Request: On March 28, the Russian Presidency of the UNSC circulated a draft letter to the Secretary-General on closing down the OFF program. This letter would have granted the Government of Iraq (GOI) 45 days to provide Confirmations of Arrival (COAs) for the remaining Letters of Credit (LOCs) with Claims of Delivery (CODs). Any LOCs for which the GOI did not provide a COA, or did not provide evidence contesting the COD, would be paid out to the supplier. The Costa Rican delegation subsequently placed a hold on this letter (Ref A). Ambassador Khalilzad agreed to not press the Costa Ricans to lift their hold until after the UNSC received the next report of the UN Working Group on OFF (Ref B). This report was issued on July 25th and confirmed a lack of progress on the part of the GOI in providing COAs for the remaining LOCs. From May 1 through June 30, only 11 out of 143 outstanding LOCs with CODs were provided COAs and paid out to the supplier. The provision of COAs for other 132 LOCs, with an approximate aggregate worth of US\$273 million, remained outstanding.

¶2. Action Request: USUN is requested to re-circulate an updated version of the March 28 draft letter to the Secretary-General (para. 5). USUN and Embassy San Jose are also requested to press the Government of Costa Rica (GOCR) to lift its hold on this letter, drawing from the talking points in paragraph 4. USUN and Embassy San Jose should inform P-5 counterparts of this demarche and its outcome and encourage them to approach the GOCR as well. The letter enjoys the support of the P-5, and the Costa Ricans are isolated in their reluctance to issue the letter. Therefore, if the GOCR refuses to lift its hold, we will move forward with adopting a resolution that contains the provisions in the letter, thereby circumventing the need for consensus. (Note: Letters from the UNSC must be passed by consensus, while resolutions require a simple majority.)

¶3. Reporting and POC: USUN and Embassy San Jose are requested to report the results of their demarches no later than Friday, August 22. IO/UNP POC is Bridget Lines, at LinesBM@state.gov, or 202-647-7142.

¶4. Begin talking points:

-- UNSC members share a keen desire to wrap up the OFF program, which officially ended in December 2007, and the UN is anxious to complete its responsibility for managing the program.

-- The GOI has thus far made little progress in resolving the outstanding Oil-for-Food payments, despite numerous reassurances that greater attention would be devoted to the issue. This lack of progress has been repeatedly noted by the Secretary-General, most recently in his July 25th note.

-- We therefore believe that the most expeditious solution is

to place the burden of authentication on the GOI. If the GOI would like to contest a supplier's claim of delivery, there are mechanisms in place for it to do so. However, if the GOI does not provide evidence to support their dispute of the supplier's claim, the contract will automatically be paid out to the supplier at the end of the 45-day period. The OFF program ended over eight months ago, and the Iraqis, lack of progress in the intervening months indicates that such measures are necessary to ensure that suppliers are repaid for the delivery of their goods.

-- We read Costa Rica's August 4 letter to the Security Council Presidency, and would support a briefing by the Secretariat to the Security Council on Oil-for-Food if that would help Costa Rica drop its objections to the letter.

-- If the GOCR refuses to join consensus on the draft letter, or if it continues to stall on this issue, we and the other members of the P-5 are prepared to adopt a resolution which would elicit the same effect as the transmission of the draft letter.

**15. Begin text of draft letter:**

Dear Mr. Secretary-General,

I have the honor to inform you that your letters dated 11

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March and 25 July 2008 and the accompanying Notes concerning the processing of letters of credit pertaining to the Oil for Food Program have been brought to the attention of the members of the Security Council.

Security Council members continue to welcome the ongoing work of the United Nations Secretariat to bring a complete and timely conclusion to all outstanding issues related to the Oil for Food Program, which terminated on 31 December 2007. In this regard, Council members express their concern at the slow processing of authentication documents by the Government of Iraq, and of the high number of outstanding letters of credit.

Accordingly, members of the Council decide that the Government of Iraq be given 45 days from the date of this letter to confirm delivery of goods associated with all letters of credit with outstanding claims of delivery, as reported in the accompanying Note to your letter dated 25 July. The Government of Iraq should also issue and transmit the necessary confirmations of arrival to the UN Secretariat within this same period of 45 days, in order for payment to be made under the relevant letters of credit. The Government of Iraq may also provide relevant documentation to contest the associated claims of delivery within this same period. In the event that neither confirmations of arrival nor documentation contesting the associated claims of delivery is received within 45 days, Council members request the Secretariat to instruct BNP Paribas to proceed with payment to the supplier.

If the Government of Iraq provides relevant documentation that substantiates the contested claims of delivery within the 45 day period, Council members request that the dispute be handled according to the dispute mechanism detailed in the underlying contract. If no such mechanism exists, or the parties decide not to rely on that mechanism, the dispute should be solved through the use of an established international arbitration mechanism agreed upon by the supplier and the Government of Iraq.

Regarding the letters of credit with no claims of delivery asserted by the supplier, Council members await the conclusion of the UN Secretariat's evaluation whether any or all of these letters of credit can be cancelled, and endorse the recommendation of cancellation. For any letter of credit cancelled, Council members request that the associated funds

on deposit with the UN be made available to the Development Fund for Iraq when all outstanding issues are resolved. For those contracts where the UN Secretariat determines that the letter of credit in question cannot or should not be cancelled, the supplier should be asked to provide all relevant supporting documentation that indicates contract performance before the December 31, 2007 expiry of the program.

In the event that a company can produce such documentation, Council members encourage the UN and the Government of Iraq to follow the mechanisms outlined in the paragraphs above. The Council members wish to recall that commercial disputes in connection with the above letters of credit should be handled in accordance with the dispute resolution mechanism provided for in the underlying contract or, in the absence of such a mechanism, through the use of an established international arbitration mechanism agreed upon by the supplier and the Government of Iraq.

Council members reiterate their call upon the Government of Iraq to do its utmost, in liaison with the Secretariat of the United Nations, to expedite the processing of the remaining letters of credit. In this regard, Members of the Council request a further progress report, to be issued by the Working Group between the representatives of the Government of Iraq, the Central Bank of Iraq, and the Secretariat, after the expiration of the 45 day deadline outlined above.

The members of the Security Council also take note of the possibility of transferring \$100 million of unencumbered funds to the Development Fund for Iraq (DFI). While Council members recognize the availability, in principle, of such funds for the transfer to the DFI in accordance with resolution 1483 (2003), they recommend that all unencumbered funds associated with the Oil for Food Programme remain in the Iraq escrow account until such time as all outstanding issues are resolved.

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